

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

**4:19CV3005**

**ORDER**

This matter is before the court on Petitioner's Motion to Substitute Respondent. (Filing 23.) The court dismissed this matter without prejudice on May 8, 2019, because Petitioner had not exhausted his state court remedies. (Filings 13 & 14.) Petitioner's appeal of that decision was denied and dismissed by the Eighth Circuit on July 12, 2019. (Filing 21; *see also* Filing 22.) Petitioner currently has a habeas case pending in Case No. 4:21CV3067 that challenges the same conviction at issue in the present case, and Scott Frakes is named as Respondent in that matter. *See Gardner v. Frakes*, 4:21-cv-03067-RGK-PRSE (D. Neb.).<sup>1</sup>

IT IS THEREFORE ORDERED that: Petitioner's Motion to Substitute Respondent (filing 23) is denied as moot.

Dated this 28th day of October, 2021.

BY THE COURT:

  
Richard G. Kopf  
Senior United States District Judge

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<sup>1</sup> In 4:21CV3067, Respondent has filed a motion for summary judgment that is ripe for disposition, and the court will issue a decision in its normal course of business.